INDEX

	Page
Opinions below	1
Jurisdiction	2
Questions presented	2
Statute involved	3
Statement	3
A. The Board's findings of fact	3
1. The relation between Deering Milliken and Darlington	3
2. The unfair labor practices	4
B. The Board's conclusions and order	8
C. The decision of the court of appeals	10
Reasons for granting the writ	11
Conclusion	18
Appendix A	19
Appendix B	48
Appendix C	50

CITATIONS

Cases:

A. M. Andrews Company of Oregon v. *National Labor Relations Board*, 236 F. 2d 44	12
Barbers Iron Foundry, 126 NLRB 30	17
Bonnie Lass Knitting Mills, 126 NLRB 1396	17
Butler Bros. v. *National Labor Relations Board*, 134 F. 2d 981, certiorari denied, 320 U.S. 789	12
Deering Milliken, Inc. v. *Johnston*, 295 F. 2d 856	8
Fibreboard Paper Products Corp. v. *National Labor Relations Board*, 322 F. 2d 411, certiorari granted, 375 U.S. 963	13

Cases—Continued

	Page
J. M. Lassing, et al., 126 NLRB 1041, enforcement denied, 284 F. 2d 781, certiorari denied, 366 U.S. 909	17
National Labor Relations Board v. *Adams Dairy, Inc.*, 322 F. 2d 553, pending on certiorari, No. 741, this term	13
National Labor Relations Board v. *Brown-Dunkin Company*, 287 F. 2d 17	12
National Labor Relations Board v. *Stremel*, 141 F. 2d 317	12
National Labor Relations Board v. *E. C. Brown Co.*, 184 F. 2d 829	12
National Labor Relations Board v. *Exchange Parts Co.*, 375 U.S. 405	12
National Labor Relations Board v. *Fruehauf Trailer Co.*, 301 U.S. 49	12
National Labor Relations Board v. *Hugh Major*, 296 F. 2d 466	13, 15
National Labor Relations Board v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1	12
National Labor Relations Board v. *Kelly & Picerne, Inc.*, 298 F. 2d 895	12
National Labor Relations Board v. *Lexington Electric Products Corp.*, 283 F 2d 54, certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL–CIO*, 365 U.S. 845	12
National Labor Relations Board v. *Missouri Transit Company*, 250 F. 2d 261	15
National Labor Relations Board v. *Preston Feed Corp.*, 309 F. 2d 346	13

Cases—Continued

National Labor Relations Board v. *Savoy Laundry, Inc.*, No. 28119 (C.A. 2), decided January 24, 1964, 55 LRRM 2285 ..... Page 16

National Labor Relations Board v. *Tak Trak, Inc.*, 293 F. 2d 270 12

National Labor Relations Board v. *United States Air Conditioning Corporation*, 302 F. 2d 280 12

National Labor Relations Board v. *Wallick*, 198 F. 2d 477 15

National Labor Relations Board v. *Winchester Electronics*, 295 F. 2d 288 12

Schnell Tool & Die Corp., 144 NLRB No. 52 17

Star Baby Co., 140 NLRB 678, pending on petition for enforcement (C.A. 2), No. 28626 17

St. Cloud Foundry & Machine Co., 130 NLRB 911, enforced, 295 F. 2d 511 17

Town & Country Manufacturing Company v. *National Labor Relations Board*, 316 F. 2d 846 13

Yoseph Bag Co., 128 NLRB 211, remanded *sub nom. District 65, Retail, Wholesale and Department Store Union* v. *National Labor Relations Board*, 294 F. 2d 364, original decision adhered to, 139 NLRB 1310 17

Statute:

National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Secs. 151, *et seq.*):

Section 7 48

Section 8(a)(1) 8, 10, 11, 15, 48

Section 8(a)(3) 8, 11, 15, 48

Section 8(a)(5) 8, 10, 11, 48

Section 9(a) 48

Section 10(c) 15, 49

Miscellaneous:

Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L.Q. 572 (1963)..... Page 17

Note, *Management Rights—Employer Does Not Have Absolute Right To Go Out Of Business Where Desire To Avoid Dealing With Union Is Present*, 49 Va. L. Rev. 616 (1963)..... 17

Note, *NLRB Orders Pay From Discharge Until Employees Find Substantially Equivalent Work To Remedy Anti-Union Mill Shutdown*, 111 U. Pa. L. Rev. 672, 673 (1963).. 17

Note, *Permanent Closing Of A Business Due To Employees' Union Activities Constitutes An Unfair Labor Practice Entitling Discharged Employees To Back Pay Until The Obtainment Of Substantially Similar Employment*, 51 Georgetown L.J. 633 (1963).. 17

In the Supreme Court of the United States

OCTOBER TERM, 1963

No. —

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DARLINGTON MANUFACTURING COMPANY; DEERING MILLIKEN, INC.; DEERING, MILLIKEN AND COMPANY; AND TEXTILE WORKERS UNION OF AMERICA, AFL-CIO

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, petitions for a writ of certiorari to review the *en banc* decision of the Court of Appeals for the Fourth Circuit entered in this case on November 15, 1963.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 19–46) is reported at 325 F. 2d 682. The findings of fact, conclusions of law and order of the Board (J.A. 1–246)[1] are reported at 139 NLRB 241.

[1] "J.A." refers to the joint appendix filed in the court of appeals. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

JURISDICTION

The decision of the court of appeals was rendered on November 15, 1963, and a decree was entered on November 19, 1963 (App. A, *infra*, pp. 46–47). On February 13, 1964, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including February 28, 1964. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and Section 10(e) and (f) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether an employer who owns several plants violates the National Labor Relations Act when he permanently discontinues operations in one of the plants and discharges its employees, in order to avoid bargaining with the union freely designated by its employees as their representative and to retaliate against the employees for their union activities.[2]

2. Should the government prevail on the basic issue, respondents may raise the further question whether the Board has power to order that the discharged employees be employed or placed on a preferential list for hiring at the other plants, and that they be given back pay from the date of discharge until the employees are

[2] The phrasing of the question assumes that the Milliken complex is to be treated as a single employer with several plants for purposes of the Act. That was the finding of the Board, which the dissenting judges below thought amply supported by the record and which the majority of the court of appeals accepted "*arguendo*" (*infra*, pp. 25, 29, 31–39). Because we believe the finding is plainly correct, we do not hesitate to ask this Court to indulge the same assumption in deciding the case.

reemployed or placed upon the preferential list or they obtain substantially equivalent employment elsewhere.[3]

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. Secs. 151, *et seq.*), are set forth in Appendix B, *infra*, pp. 48–49.

STATEMENT

A. THE BOARD'S FINDINGS OF FACT

1. THE RELATION BETWEEN DEERING MILLIKEN AND DARLINGTON

Darlington Manufacturing Company, at the time of its cessation of operations in December 1956, was found to be one of 17 corporations operating textile mills commonly owned and controlled by the Milliken family. Deering Milliken and Company, also owned and controlled by the Milliken family, acted as exclusive sales agent and factor for all of the mills (J.A. 110–111). The Darlington plant was located in Darlington, South Carolina (J.A. 51). It manufactured cotton print cloths, as did three of the other mills in the Milliken complex (J.A. 25; 514–520, 522, 933, 935–936, 938–939, 941, 943–945). The Milliken family owned a majority of the stock in Deering Milliken and Company and Cotwool Manufacturing Company (one of the seventeen corporations); and, through direct stock ownership and these two companies, they

[3] If the first question is answered in the negative, there would remain a further question whether the Board order should be enforced insofar as it is premised on unfair labor practices committed by the employer before closing the plant. We do not, however, suggest that that question presents an issue of sufficient importance to require resolution by this Court.

owned more than 66 percent of Darlington's stock (J.A. 23–24, 213; 236–237, 1292–1300, 1308–1311).[4] Roger Milliken was president of Darlington, of Deering Milliken, and of all of the other mill corporations except one (where he was vice-president) (J.A. 24; 1322); and a majority of the directors of all of the mill corporations except one (Hartsville) were members of the Milliken family (J.A. 24; 520–521, 1322, 1351). Roger Milliken exercised ultimate control over the labor relations of all of the corporations. He received reports from each of the mills as to progress made in reducing the number of jobs, the pay raises given, hours worked, and job assignments; he made suggestions as to the hiring of personnel and approved other personnel actions; and, as shown more fully *infra*, pp. 4–7, he directed a campaign against unionization. (J.A. 24–25; 1013–1020, 1072–1073, 1086–1089, 1274, 1679–1681, 1694–1699, 1711–1717, 1730–1731, 1735, 1740, 1748–1753, 1757–1811, 1824–1859).

2. THE UNFAIR LABOR PRACTICES

In March 1956, Textile Workers Union of America began an organizing campaign among the employees in the Darlington mill, and thereafter petitioned the Board for a representation election (J.A. 4, 52). Supervisory personnel threatened, on numerous oc-

[4] In 1960, after the commission of the unfair labor practices herein, Deering Milliken and Company and Cotwool merged and formed Deering Milliken, Inc.; in the process, several of Cotwool's former subsidiaries were absorbed into Deering Milliken, Inc. (J.A. 1322, 1872–1873). The Board's order thus runs against both Deering, Milliken and Company, and Deering Milliken, Inc. (J.A. 27, n. 48).

casions, that Roger Milliken would close down the mill if the Union won the election, some of them adding that he had already done this at other mills in which he held an interest (J.A. 4, 6–7, 25; 325, 326–327, 344, 345–346, 350, 354–355, 361–363, 370; see also, J.A. 305, 308–309, 317, 319–320, 321–322, 356–357, 366, 384). The supervisors also told the employees that union adherents were going to be discharged and blacklisted, and they interrogated a number of employees about their union activity (J.A. 4, 6–7, 77; 303, 305, 313, 316, 317, 327, 334, 339, 345, 350, 354–356, 365, 376–377, 488–489, 490).

Notwithstanding the anti-union campaign, on September 6, 1956, the Union won a Board-directed election by a narrow margin (J.A. 4; 250–251). On the following day, Roger Milliken decided to recommend to the stockholders and directors that the mill be shut down, admittedly because a majority of the employees had voted for the Union (J.A. 4; 456–457, 464, 472, 476–477, 422–425, 263). On September 12, Darlington's seven-man board of directors, four of whom were officers of Deering Milliken, voted to liquidate the mill and to call a special stockholders' meeting to approve the proposal (J.A. 5; 279–280, 431, 1257–1261, 1290, 1322).

After being advised of this decision, Darlington's supervisors told the employees that Roger Milliken had decided to close the mill, because the Union had been designated as the employees' representative; and that they would be blacklisted for employment in other mills, including the other Deering Milliken

mills (J.A. 5, n. 10, 6; 314, 327, 351–353, 357, 359, 370; see also, J.A. 306, 309–311, 320, 344, 366–367, 374, 380, 482). One supervisor observed that "Roger Milliken knew that the Union had planned to organize the south and * * * were going to pick one of his mills and he has set a trap for them and they had walked in and took the very mill that Roger Milliken wanted them to take" (J.A. 5, n. 10, 6, 353). Meanwhile, members of management were encouraging employees to sign a petition disavowing the Union, in order to keep the mill open (J.A. 5, n. 10, 6; 381–383, 323–324, 337, 359–360, 368–369).

On October 17, Darlington's stockholders met to consider the board of directors' resolution to dissolve the corporation because of "certain developments" which Roger Milliken described to the stockholders as the Union's election victory (J.A. 5; 292, 1262–1265). An overwhelming majority of the stock was voted in favor of liquidation (J.A. 5; 438, 494–495, 1292, 1295, 1296–1300). Included among the stock voted for liquidation was the 41 percent of Darlington's shares owned by Deering Milliken and voted by Roger Milliken (J.A. 438, 494–495). After the stockholders' meeting, a State senator who had been present pointed out to Roger Milliken the serious effect of the shutdown on the City of Darlington, and stated that the decision was "unfair" because 83 percent of the employees had "signed a petition to go back to work" (J.A. 5; 266. p. 6, *supra*). Milliken replied, "As long as there was 17% of these hard core labor people here, I refuse to operate the mill" (J.A. 5; 268, 266).

By telegram dated October 25, the Union advised

Darlington that it had been certified by the Board, and urged a bargaining conference no later than October 30 in order to maintain mill operations and preserve employees' jobs (J.A. 1244, 253). Management delayed meeting until November 7, when it refused to discuss the Union's suggestions and declined to furnish it with information regarding the identity and termination dates of the employees who were currently being laid off in anticipation of the ultimate closing of the plant (J.A. 71; 254–257, 1246–1253).

On October 17, 1956, the Darlington board of directors authorized a partial liquidating dividend, of which Deering Milliken received about $615,000 and Roger Milliken and his immediate family about $75,000 (J.A. 293, 437–438). Plant operations ceased altogether on November 24, 1956, and, on December 12 and 13, the plant was auctioned off piecemeal (J.A. 6; 258). Thereafter, several of Darlington's unfulfilled contracts were assumed by other Milliken mills and in some cases those mills increased their sales to Darlington's former customers, independently of the old contracts (J.A. 928, 933–967).

On November 14, 1956, Roger Milliken forwarded to the treasurers of a number of Deering Milliken mills, and to certain others connected with the Deering Milliken organization, a memorandum stating that the unions were "going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do." Milliken urged a careful reading of a portion of a magazine

article, enclosed with the memorandum, which stated, in effect, that for many years Deering Milliken's policy had been to close down unionized mills (J.A. 25; 1677, 969).[5]

B. THE BOARD'S CONCLUSIONS AND ORDER

The Board found that Darlington violated Section 8(a)(1) by the threats, interrogation, and support of the anti-union petition; that the plant was shut down in order to discourage the employees' union activity and in order to avoid bargaining with the Union; and that Darlington violated Section 8(a)(5) by refusing to bargain with respect to the tenure of employment of the employees in the Darlington mill, and by refusing to furnish the Union with wage and related bargaining data (J.A. 6–9, 19).[6] The Board (with Member Rodgers dissenting) further found that the shutdown, since it was motivated by anti-union considerations, constituted a violation by

[5] The newspaper article and Milliken's covering memorandum were inadvertently omitted from the joint appendix. They are reprinted in Appendix C, *infra*, pp. 50–56.

[6] Though the original charges were filed by the Union in October, 1956, and the initial complaint was issued in December of the same year, the Board's final order was not entered until October 18, 1962. The chronology of this delay is fully recited in the Board's opinion (J.A. 1–3) and need not be repeated here. Suffice it to say that the matter was twice remanded to the trial examiner; that the final remand was contested in the courts by the respondents (see *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 856 (C.A. 4)), and that the supplemental proceedings dealt primarily with the liability of Roger Milliken as an individual and the status of the Milliken complex as a single employer.

Darlington of Sections 8(a)(3), (1) and (5) (J.A. 9–18). Finally, the Board (with Members Leedom and Rodgers dissenting) found that there was a sufficient degree of common ownership and common control over labor relations and operations to render Darlington, Deering Milliken, and Deering Milliken's affiliated corporations (see pp. 3–4, *supra*) a single employer under the Act; hence, the Board held that all of the violations committed by Darlington were also attributable to Deering Milliken (J.A. 23, 27).

The Board's order (J.A. 30–33, 39–42), *inter alia*, requires Darlington and Deering Milliken to cease and desist from the unfair labor practices found; and, if operations are resumed in Darlington, South Carolina, to bargain with the Union as the employees' exclusive representative (J.A. 30–31). They are further directed to give the employees back pay for a period to terminate (if the Darlington plant does not reopen) when the employees obtain substantially equivalent employment, or are employed or placed on a preferential hiring list at other Deering Milliken mills (J.A. 21–23, 27–28, 31–32). Deering Milliken is required to offer the Darlington employees employment, or placement on a preferential hiring list, at other Deering Milliken mills in South Carolina or adjacent States; to pay the travel and moving expenses of the employees who accept the offer; and to bargain collectively with the Union for the purpose of reaching an agreement as to the operation of the preferential hiring lists, and as to the terms and conditions under which the former employees of the

Darlington mill may, if they desire, obtain such employment (J.A. 27–29, 32–33). Finally, Darlington and Deering Milliken are required to mail and publish appropriate notices directed to the Darlington employees (J.A. 32–33, 39–42).

C. THE DECISION OF THE COURT OF APPEALS

The court of appeals, which sat *en banc,* by a 3–2 vote denied enforcement of the Board's order. The court accepted *arguendo* for the purposes of its decision the Board's finding that the Darlington plant was shut down in order to discourage union membership and to avoid bargaining, and also its finding that Darlington and Deering Milliken were a single employer (Appendix A, *infra,* pp. 25–26, 29).[6a] The court concluded, however, that the decision to close the plant was not an unfair labor practice, reasoning that an employer has the "absolute prerogative" to "go out of business in toto, or to discontinue it in part, permanently at any time," even if this action is "spurred by unionization" (Appendix A, *infra,* pp. 26, 27). The court also refused to enforce those parts of the Board's order based on its findings that Darlington and Deering Milliken violated Sections 8(a) (1) and (5) of the Act prior to the shutdown, on the ground that "Remedies for these offenses are not now available as Darlington is no longer alive" Appendix A, *infra,* p. 30).

[6a] Since the court did not consider whether the finding was sustained by substantial evidence, the issue would appear to be open on remand. For the purposes of this petition we take the case on the assumption made by the court below.

The two dissenting judges (Judge Bell and Chief Judge Sobeloff) would have enforced the Board's order. In their view, "overwhelming" evidence supported the Board's finding that Darlington and Deering Milliken were a single employer; "abundant" evidence supported the Board's finding that the plant was shut down because of the employees' union activities and as a "grim deterrent to the thousands of employees in the [Deering Milliken] plants who might entertain similar notions of unionization"; in their view the shutdown of the Darlington mill was the equivalent of an employer's transferring or contracting out part of his operation in order to defeat a union, and violates Section 8(a)(3) of the Act. The dissenting judges also agreed, as the Board found, that the shutdown violated Sections 8(a) (1) and (5). (Appendix A, *infra*, pp. 30–46.)

REASONS FOR GRANTING THE WRIT

This case presents an important question under the National Labor Relations Act involving the right of an employer to shut down one of his plants for the purpose of avoiding bargaining with the union which the majority of the employees of that plant have selected, thus discouraging employees from seeking to bargain collectively at other mills. The decision of the sharply divided court of appeals sustaining the employer's right is, we believe, erroneous, and conflicts in principle with the decisions of two other circuits.

1. It is a settled principle that action taken by an employer which is permissible when taken for

normal business reasons becomes an unfair labor practice when the purpose is to discourage unionization or defeat collective bargaining. *National Labor Relations Board* v. *Exchange Parts Co.*, 375 U.S. 405. To discharge individual employees because of their union activity is a form of discrimination and restraint proscribed by Sections 8(a) (3) and (1) of the National Labor Relations Act.[7] So, also, it violates the Act to close a plant entirely and discharge all employees with a view to re-opening with non-union labor.[8] And, finally, the Act does not permit an employer to shut down one part of his operation, even permanently, and either transfer its work to other parts,[9] or contract it out to an independent entity,[10]

[7] See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U.S. 1; *National Labor Relations Board* v. *Fruehauf Trailer Co.*, 301 U.S. 49.

[8] *National Labor Relations Board* v. *Tak Trak, Inc.*, 293 F. 2d 270 (C.A. 9). *National Labor Relations Board* v. *Stremel*, 141 F. 2d 317 (C.A. 10). *National Labor Relations Board* v. *E. C. Brown Co.*, 184 F. 2d 829 (C.A. 2), *Butler Bros.* v. *National Labor Relations Board*, 134 F. 2d 981, 985 (C.A. 7), certiorari denied, 320 U.S. 789. *National Labor Relations Board* v. *United States Air Conditioning Corporation*, 302 F. 2d 280 (C.A. 1) (only former nonunion employees taken on at new operation).

[9] *National Labor Relations Board* v. *Lexington Electric Products Corp.*, 283 F. 2d 54 (C.A. 3), certiorari denied *sub nom. Local 3, International Brotherhood of Electrical Workers, AFL-CIO*, 365 U.S. 845; *A. M. Andrews Company of Oregon* v. *National Labor Relations Board*, 236 F. 2d 44 (C.A. 9); *National Labor Relations Board* v. *Winchester Electronics*, 295 F. 2d 288 (C.A. 2).

[10] *National Labor Relations Board* v. *Brown-Dunkin Company*, 287 F. 2d 17 (C.A. 10); *National Labor Relations Board* v. *Kelly & Picerne, Inc.*, 298 F. 2d 895 (C.A. 1);

if his purpose is to discriminate against the union. The holding of the court below that an employer may discontinue part of his operation for anti-union reasons, so long as the discontinuance is "an actual, unfeigned and permanent end of operations—not a removal nor subcontract," is, in our view, contrary to these settled principles.

We do not suggest that the National Labor Relations Act raises any impediment to the right of an employer to go out of business, close a plant or curtail operations because he finds them unprofitable, or for any other business reason. Both the Act and our position are entirely consistent with full recognition of the privilege to make business decisions, including the decision to close a plant, for normal economic reasons.[11] Here the finding is that the employer closed the Darlington plant not for economic reasons,

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National Labor Relations Board v. *Hugh Major*, 296 F. 2d 466 (C.A. 7); *National Labor Relations Board* v. *Preston Feed Corp.*, 309 F. 2d 346 (C.A. 4); *Town & Country Manufacturing Company* v. *National Labor Relations Board*, 316 F. 2d 846 (C.A. 5).

[11] Since the closing here was found not motivated by economic reasons, there is no need to consider how far there is a duty to bargain concerning a projected curtailment of operations or the abandonment of a business for economic reasons. See *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, 322 F. 2d 411 (C.A.D.C.), certiorari granted, 375 U.S. 963; *National Labor Relations Board* v. *Adams Dairy, Inc.*, 322 F. 2d 553 (C.A. 8), petition for certiorari pending, No. 741, this Term. It might be held that where the employees have chosen a representative the employer may not make this decision until he has negotiated in good faith, but in any event, the duty to negotiate with the union is not a duty to agree.

but out of hostility toward the union which had just won recognition from the employees as their representative. Indeed, the record suggests that the employer, at the time, deliberately eschewed an economic justification for his action, preferring to make plain that the closing was motivated by anti-union bias. It is that conduct, calculated to prevent collective bargaining and discourage union organization, that we attack as unfair.

Nor does the instant case present the question whether an employer may go out of business altogether, abandoning all related operations, if his purpose is to avoid "unionization." For in reaching the decision below the court of appeals assumed the correctness of the Board's finding, fully supported by the evidence, that the Milliken complex was a single employer, operating some twenty-six textile mills other than the discontinued Darlington operation. Our argument here is premised on the fact that the closing of the Darlington plant was intended to serve as a dramatic warning to employees at other plants of the employer of the consequence of "going union." That is what makes the problem so acute. The full impact of the Darlington closing, and its avowed purpose, are accurately reflected in the contemporary magazine article that Roger Milliken thought proper to distribute to the management people in several mills of the family complex (Appendix C, p. 56):

> If the people of Darlington knew anything of the Deering, Milliken record they would know that the management does not intend an unprofitable division nor has it intended to share

the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it; although the Cowan and Farnsworth Mills in the State of Maine still operate and must, therefore, be profitable. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation.[12]

2. The holding of the court below that an employer does not violate the Act by permanently discontinuing part of his business to avoid bargaining with the union conflicts in principle with the decision of the

[12] We do not believe that argument on the propriety of the Board's remedy is warranted at the petition stage. However, we submit that the requirement that Deering Milliken offer the unlawfully discharged Darlington employees employment or placement on a preferential hiring list at its other plants, and give them back pay until such time as this offer is made or the employees obtain substantially equivalent employment elsewhere is, as the dissenting judges concluded (Appendix A, *infra*, pp. 40–45), a reasonable means of redressing the unfair labor practices found and well within the Board's broad remedial power under Section 10(c) of the Act. See *National Labor Relations Board* v. *Missouri Transit Company*, 250 F. 2d 261, 263–265 (C.A. 8); *National Labor Relations Board* v. *Wallick*, 198 F. 2d 477, 482 (C.A. 3); *National Labor Relations Board* v. *Hugh Major*, 296 F. 2d 466, 467–468 (C.A. 7).

Eight Circuit in *National Labor Relations Board* v. *Missouri Transit Company*, 250 F. 2d 261, and the decision of the Second Circuit in *National Labor Relations Board* v. *Savoy Laundry, Inc.*, No. 28119 (C.A. 2), decided January 24, 1964, 55 LRRM 2285. In *Missouri Transit*, the court held that a bus company which was engaged in both a short-line intrastate shuttle-busline operation and a long-line interstate bus operation violated Section 8(a)(3) and (1) of the Act when, because of the union activity of the drivers employed on its shuttle-bus operation, it unconditionally discontinued that operation and sold all of the equipment used in it to a competitor, who undertook to provide shuttle-bus service. In *Savoy Laundry*, the court found a violation of the Act in the discontinuance by a laundry of its wholesale shirt laundering division to avoid bargaining with the union representing the employees involved in that operation. While it is, of course, possible to distinguish these cases as involving the abandonment of a mere phase of a single operation in contrast to the closing of a separately incorporated plant, geographically segregated from the employer's other operations, the distinction seems immaterial once it is established that the several corporate entities are operated as a single enterprise. The court below decided the case upon that basis.

3. The underlying question—whether an employer may permanently discontinue a part of his business operations in order to avoid dealing with the union—is an important one in the administration of the Labor Act. The court of appeals so recognized by sitting

en banc in this case, and the decision has evoked wide interest and comment.[13] While, in our view, the answer in the present context is clear, one must recognize that the case involves a difficult accommodation between the claim of free enterprise to make its own decisions whether to discontinue any part of its operations for any reason and the right of employees to organize without hindrance from their employer. The problem is not academic. It has arisen with increasing frequency in recent years, both in the context of a partial [14] and a total [15] discontinuance of the business. The question is therefore appropriate for review by this Court.

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[13] See Note, *Business Liquidation as an Unfair Labor Practice*, 48 Cornell L.Q. 572 (1963); Note, *Management Rights—Employer Does Not Have Absolute Right To Go Out Of Business Where Desire To Avoid Dealing With Union Is Present*, 49 Va. L. Rev. 616 (1963); Note, *NLRB Orders Pay From Discharge Until Employees Find Substantially Equivalent Work To Remedy Anti-Union Mill Shutdown*, 111 U. Pa. L. Rev. 672, 673 (1963); Note, *Permanent Closing Of A Business Due To Employees' Union Activities Constitutes An Unfair Labor Practice Entitling Discharged Employees To Back Pay Until The Obtainment Of Substantially Similar Employment*, 51 Georgetown L. J. 633 (1963).

[14] See *Barbers Iron Foundry*, 126 NLRB 30; *Bonnie Lass Knitting Mills*, 126 NLRB 1396; *St. Cloud Foundry & Machine Co.*, 130 NLRB 911, enforced by default, 295 F. 2d 511 (C.A. 8); *Schnell Tool & Die Corp.*, 144 NLRB No. 52. Cf. *J. M. Lassing, et al.*, 126 NLRB 1041, enforcement denied, 284 F. 2d 781 (C.A. 6), certiorari denied, 366 U.S. 909.

[15] See *Star Baby Co.*, 140 NLRB 678, pending on petition for enforcement before the Second Circuit, No. 28626; *Yoseph Bag Co.*, 128 NLRB 211, remanded, *sub nom. District 65, Retail, Wholesale and Department Store Union* v. *National Labor Relations Board*, 294 F. 2d 364 (C.A. 3), original decision adhered to so far as material here, 139 NLRB 1310.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

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FEBRUARY 1964.

APPENDIX A

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8790

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, INTERVENOR

ON PETITION TO REVIEW AND SET ASIDE ORDER OF THE NATIONAL LABOR RELATIONS BOARD

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL–CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

and

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

Transferred from the United States Court of Appeals for the District of Columbia Circuit

No. 8906

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

DEERING, MILLIKEN AND COMPANY, INC., RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Argued June 13, 1963. Decided November 15, 1963)

Before SOBELOFF, Chief Judge, HAYNSWORTH, BOREMAN, BRYAN and BELL, Circuit Judges, sitting en banc

Thornton H. Brooks (McLendon, Brim, Holderness & Brooks on brief) for Darlington Manufacturing Company; Stuart N. Updike and John R. Schoemer, Jr. (Townley, Updike, Carter & Rodgers on brief), for Deering Milliken, Inc., and Deering, Milliken and Company, Inc.; Nancy M. Sherman, Attorney, National Labor Relations Board, Arnold Ordman, General Counsel (Dominick L. Manoli, Associate General Counsel; Marcel Mallet-Prevost, Assistant General Counsel and James C. Paras, Attorney, National Labor Relations Board, on brief) for National Labor Relations Board, and Benjamin Wyle (Patricia Eames on brief) for Textile Workers Union of America, AFL–CIO

ALBERT V. BRYAN, Circuit Judge:

The National Labor Relations Board in these consolidated cases has made these pivotal decisions:[1]

[1] 139 NLRB No. 23, decided October 18, 1962.

1. Darlington Manufacturing Company committed an unfair labor practice under the National Labor Relations Act, Section 8(a)(3)[2]—forbidding discrimination in regard to tenure of employment—by closing and liquidating its only plant, and discharging its employees, in 1956 because of the election of Textile Workers Union of America, AFL–CIO as bargaining representative for the employees;

2. Darlington must pay all of such discharged employees their wages, less current net earnings, "until the discharged employees are able to obtain substantially equivalent employment" or until they are put on a preferential hiring list by Deering Milliken, Inc.; and

3. Deering Milliken, Inc. and its affiliates are liable for the payment of these wages on the ground that Darlington, with others, was such an affiliate of Milliken and together they constituted a single employer.

In petition No. 8790 Darlington and Milliken seek to vacate these Board orders. In No. 8861 the Union, which was the charging party before the Board, prays that the orders be enlarged to require also the reopening of the Darlington plant with reinstatement of the employees, and that Roger Milliken, president of both Darlington and Milliken, notwithstanding the contrary decision of the Board, be held personally liable to satisfy the orders. In No. 8906 the Board seeks enforcement against Milliken of the Darlington liability.

As these actions have common issues they have been argued and considered together. We decline to enforce these orders of the Board against Darlington and Milliken.

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[2] 29 U.S.C. § 158(a)(3).

Darlington, chartered under the laws of South Carolina, operated a print cloth mill there, manufacturing and selling cotton greige goods. It had no other plant. In 1937 Darlington went through a Section 77B bankruptcy proceeding, 11 U.S.C. § 207 (1937 ed.). Milliken, then known as Deering Milliken & Co., Inc., as one of the largest creditors, received in payment of its debt about 41% of Darlington's common stock. When Darlington was liquidated in 1956, as previously mentioned, there were outstanding 150,000 shares of common stock owned as follows:

	Percent
Deering Milliken & Co., Inc.	41.4
Cotwool Manufacturing Corp.	18.3
Roger Milliken and members of his immediate family	8.4
Directors and employees of Deering Milliken & Co.	2.9
Outsiders or non-Milliken family or interests (about 100 stockholders living in South Carolina, 50 in New York, and more than 50 scattered over the United States)	31.0
	100.0

In March 1956 the Union commenced a campaign to organize the Darlington employees and to become their bargaining representative. An election conducted under the direction of the Board was called for September 6, 1956. The Union won, 258 to 252.

On September 12 Darlington filed objection to the election. A conference was requested on the same day by the Union to discuss a collective bargaining agreement. The request was refused by Darlington on the ground the election protest had not been decided and the Union had not been certified.

Also on September 12, the Board of Directors met, with all of them present. Following a brief discussion of the business status of Darlington, they resolved to recommend to the stockholders the liquidation and dissolution of the corporation. A meeting

of the stockholders to act upon the resolution was called for October 17. Employees of Darlington were at once told of the recommendation. While no new ones were accepted, the plant continued to fill the orders then in hand. The objection of Darlington to the election was overruled on October 8, and the Union shortly certified as the bargaining representative.

With the stockholders on October 17 adopting the recommendation of the Board of Directors by a vote of 134,911 shares to 3,774, the officers proceeded with the liquidation. Discharge of employees occurred over a span of about six weeks: from 510 employees on October 13, the payroll dropped to 460 on October 20, to 345 on October 27 and to none when the plant closed on November 24. The machinery and equipment were sold at auction on December 12 and 13, 1956. Since that time Darlington has not operated any plant in South Carolina or elsewhere.[3]

Deering Milliken & Co., Inc.'s capital stock was owned in a majority amount by members of the Milliken family. In addition they were the major (but by no means the only) shareholders in Darlington and in certain other textile corporations. The latter are the corporations referred to by the Board and in this opinion—somewhat imprecisely—as "affiliated corporations" of Milliken. Prior to 1960 Deering Milliken & Co., Inc. was not a manufactory. It was the exclusive sales representative of the producing corporations controlled by the Milliken family.

In June 1960 Deering Milliken & Co., Inc. was merged into the Cotwool Manufacturing Corporation, and the latter's name then changed to Deering Milliken, Inc., herein known as Milliken. A majority of

[3] A concise history of the proceedings in this case appears in Judge Haynsworth's opinion for this Court in *Deering Milliken, Inc.* v. *Johnston*, 295 F. 2d 865 (1961).

its stock was owned by the Milliken family. After the merger Milliken carried on the textile manufacturing formerly pursued by Cotwool.

The finding of the Board—that the decision to close the mill was an unfair labor practice under § 8(a)(3)—was spelled out in this way:

> Darlington discriminated in regard to its employees' tenure of employment by closing its plant—thereby discharged the employees—and, because the plant closing was the direct result of the employees' selection of the Charging Union as their collective bargaining representative, Darlington's retaliation against the employees for their activities in behalf of the Union discouraged the employees' continued membership in any labor organization.

Abridged and as pertinent here the terms of § 8(a)(3) are these:

> It shall be an unfair labor practice for an employer—by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization.

In this determination the Board acknowledged, as the Trial Examiner had found, that there were economic considerations sufficient in themselves to support the decision by Darlington to terminate operations. However, both the Examiner and the Board concluded that "the decision to close the mill was not a fact based on economic factors, and that, but for the Union's election victory, that decision would not then have been made."

Upon this premise the Board declared all the closure discharges to be unlawful, justifying the usual remedy of reinstatement and reimbursement for loss of pay. But with the shutdown complete and perma-

nent reinstatement not achievable, the relief was necessarily directed primarily to restitution of wages. The monetary redress was awarded by the Board as follows:

> [W]e shall therefore order the Respondent, Darlington, to provide back pay *until the discharged employees are able to obtain substantially equivalent employment.* (Accent added.)

Further, the Board overruling the Trial Examiner found that "Darlington occupied a single employer status with Deering Milliken and its affiliated corporations." On this basis Milliken and its affiliates were declared "liable for back pay to the same extent as we have heretofore directed with respect to Darlington" and were ordered to place the discharged employees on a preferred hiring list. Additionally, Milliken was commanded to offer employment to these discharged workers in its other mills in South Carolina or nearby States, without prejudice to their seniority and other privileges.

All of these orders were qualified by the proviso that if no work was available at the Milliken mills, then the accumulation of back pay would be tolled as and when the dischargees were put upon Milliken's preferential hiring list.

I. Our opinion is that the decision to close the plant was not an unfair labor practice. In this we accept the findings of fact made by the Board. While, as just observed, the evidence discloses substantial economic reasons warranting the determination to close the plant without reference to the entry of the Union into the plant, we accede arguendo to the contention of the Board that these reasons were not acted upon. Even if they were, however, we shall assume, again arguendo, with the Board that if unionization also

played a part in the resolve to close the plant, then the contribution of this factor may be considered as responsible for the cessation.

To go out of business in toto, or to discontinue it in part, permanently at any time, we think was Darlington's absolute prerogative. The fundamental purpose of the National Labor Relations Act is to preserve and protect the rights of both industry and labor so long as they are in the relationship of employer and employee. But the statute's scope does not exceed that province. It does not compel a person to become or remain an employee. It does not compel one to become or remain an employer. Either may withdraw from that status with immunity, so long as the obligations of any employment contract have been met. Such withdrawal, alone and of itself, does not create any obligation of either the employer or the employee to the other under the Act. *Cf.* Dissenting opinion of Board Member Rodgers in the present case. If a cessation of business is adopted to avoid labor relations, the proprietor pays the price of it: permanent dissolution of his business, in whole or in part. A statute authorizing an order forcing the continued pursuit of operations in these circumstances would be of doubtful validity. Consider the consequences of an attempt to punish as contempt a violation of such an order, and its fatal infirmity is revealed: the proprietor would be jailed or otherwise penalized for not reopening a demised business or reinstating employees.

Of course, the right of discontinuance which we here uphold, means an actual, unfeigned and permanent end of operations—not a removal, nor subcontract, nor a change merely in the form of the corporate entity. No ruse or subterfuge is suggested here. Darlington's was an absolute desistence, not a

temporary intermission as apparently was contemplated in *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953). There was no provisional lockout, the mill was not transplanted elsewhere, and its sale was concededly entire, bona fide and irrevocable. The Trial Examiner demonstrated beyond debate that Darlington was not a "runaway" plant—that is, a plant having another existence in another form—finding that Darlington was not hidden among the other Milliken corporations. No disagreement with this finding was, or on substantial evidence could have been, expressed by the Board.

"There is no decided case," the Board candidly states, "directly dispositive of Darlington's claim that it had an absolute right to close its mill, irrespective of motive." While a number of the decisions on the point mention the presence of a legitimate economic reason in connection with the right to close, an analysis of them discloses that they do not declare the existence of such a reason to be indispensable to the validity of the closing. See e.g., *NLRB* v. *Preston Feed Corp.*, 309 F. 2d 346, 352 (4 Cir. 1962); *NLRB* v. *New England Web, Inc.*, 309 F. 2d 696, 700 (1 Cir. 1962); *NLRB* v. *Rapid Bindery, Inc.*, 293 F. 2d 170, 175 (2 Cir. 1961); *Union Drawn Steel Co.* v. *NLRB*, 109 F. 2d 587, 592 (3 Cir. 1940). Nor are they precedents for the proposition that an owner or operator cannot go out of business at his option if the closure is intended to be, and is in truth, absolute and permanent. These authorities, we think, support the view that if the termination is without intent to resume the business elsewhere—as a runaway—the power to close, even if spurred by unionization, is not precluded by the Act.

The right is implicitly recognized in *Southport Petroleum Co.* v. *NLRB*, 315 U.S. 100, 106 (1942),

with Justice Jackson saying, "Whether there was a *bona fide* discontinuance and a true change of ownership—*which would terminate the duty of reinstatement*" was a question of fact determinable by the Board or the Court on contempt proceedings. [Accent added.] Bona fides does not mean exclusively an economic ground, but as well that the termination was, as here, not merely a gesture but an actuality.

Lower courts have long given explicit sanction to the right of discontinuance. Over 20 years ago the Fifth Circuit said in *NLRB* v. *Tupelo Garment Co.*, 122 F. 2d 603, 606 (5 Cir. 1941):

> The stockholders of Tupelo Garment Co. [the employer] had the absolute right to dissolve their corporation and the Board was without authority to prevent this.

Recently, the Sixth Circuit put it this way in *NLRB* v. *R. C. Mahon Co.*, 269 F. 2d 44, 47 (6 Cir. 1959):

> We find nothing in the National Labor Relations Act which forbids a company, in line with its plans for operation, to eliminate some division of its work. As held in National Labor Relations Board v. Adkins Transfer Company, Inc., supra, [226 F. 2d 324] an employer faced with the practical choice, either of paying enhanced wage rates demanded by a union or of discontinuing a department of its business, is entitled to discontinue.

Other courts have spoken in like manner and as emphatically, e.g., *NLRB* v. *New England Web, Inc., supra,* 309 F. 2d 696, 700; *Jays Foods, Inc.* v. *NLRB,* 292 F. 2d 317, 320 (7 Cir. 1961); *NLRB* v. *New Madrid Mfg. Co.,* 215 F. 2d 908, 914 (8 Cir. 1954); *NLRB* v. *Caroline Mills, Inc.,* 167 F. 2d 212, 214 (5 Cir. 1948); *Atlas Underwear Co.* v. *NLRB,* 116 F. 2d 1020, 1023 (6 Cir. 1941).

To be sure, there are decisions adjudging the employer liable even upon an absolute disposition of all or a part of the business equipment; *NLRB* v. *Kelly & Picerne, Inc.*, 298 F. 2d 895 (1 Cir. 1962); *NLRB* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957); *NLRB* v. *Bank of America*, 130 F. 2d 624 (9 Cir.), cert. denied, 318 U.S. 791 (1942). Upon examination, however, it will be observed that these cases did not involve the extinguishment altogether of the business and the end of further participation by the employer in his former sphere. The predominant element of the principle we maintain is that the business is no longer extant and the owner has forfeited the penalty for withdrawing, that is, he has forgone the privilege of further pursuit of his business.

II. The doctrine of single employer, heretofore noted, was used by the Board to project Darlington's liability, as determined by the Board, upon Milliken. See *NLRB* v. *Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (4 Cir. 1962), cert. denied. 372 U.S. 911 (1963); *NLRB* v. *Deena Artware, Inc.*, 361 U.S. 398 (1960). Our decision that *Darlington* is without liability, of course, bars such expansion of responsibility. Furthermore, even if Darlington was a division of Milliken, the transfer of Darlington's liability to Milliken upon the single employer principle is precluded because, as we have stated, a part, like the whole, of a business may be abolished when the extinction is consummated in circumstances like the present.

III. In its petition the Union asked us to enlarge the Board's order to include Roger Milliken individually in the orders of restoration of wages entered by the Board. This prayer like the further prayer of the Union that Darlington be required to reopen its plant is, obviously, denied by our acquittal of Darlington of liability.

The Board sustained the Trial Examiner in finding that Darlington had violated § 8(a)(1) in pre- and post-election statements and urging a repudiation of the Union. Likewise § 8(a)(5)—wherein refusal to bargain is made an unfair practice—was found contravened by Darlington. Remedies for these offenses are not now available as Darlington is no longer alive.

Power to command an employer to stay in business indefinitely, or assess him with damages for permanently going out of business, is not a National Labor Relations Board prerogative. Assumed by the Board in these cases, it is denied here.

Enforcement of Orders Denied.

J. SPENCER BELL, Circuit Judge, with whom Sobeloff, Chief Judge, concurs, dissenting:

If I read the majority opinion correctly it stands for the proposition that an employer may cease business in whole or in part for any reason, including anti-union bias, so long as such cessation is actual, unfeigned and permanent. It also holds that having ceased business and thereby terminated the employer-employee relationship, an employer may not be held liable under the National Labor Relations Act for any violations committed prior to his cessation of business. Since, in the opinion of the majority, an employer may cease business in part for any reason, including anti-union bias, they do not reach the question presented by the Board's finding that Deering Milliken [4] constituted a single employer of which Darlington was a part.

[4] Throughout this opinion Deering Milliken is used to refer to the entire complex of 27 manufacturing corporations and the affiliated service corporations unless it is clear from the context that the reference is to the factoring and sales agency, Deering Milliken and Company, Inc., later merged into Cotwool Manufacturing Corp. and then called Deering Milliken, Inc.

In my opinion the question presented to this court is whether an employer commits an unfair labor practice when he closes down a part of his business in order to discourage the practice and procedure of collective bargaining and to retaliate against his employees for exercising their freedom of self organization under the National Labor Relations Act. Not only does such conduct violate the basic policies embodied in the Act; it is literally within the proscription of Section 8(a)(3). Furthermore, it has been held to be an unfair labor practice by prior decisions of this and other Circuits, and I am unable to read the cases cited by the majority in support of its opinion as holding to the contrary.

SINGLE EMPLOYER STATUS

The Board found that there was a sufficient degree of common ownership and control of labor relations and operations among Darlington, Deering Milliken, and its affiliated corporations to hold that these entities were in reality a single employer under the National Labor Relations Act.

As this court held in *N.L.R.B. v. Gibraltar Industries, Inc.*, 307 F. 2d 428, 431 (4 Cir. 1962), cert. denied, 372 U.S. 911 (1963), a Board determination that two or more economic entities constitute a single employer is entitled to judicial approval if "there is substantial evidence in the record to support the Board's conclusion and order". The court in review, moreover, may not "displace the Board's choice between two fairly conflicting views, even though the court would justifiably have made a different choice had the matter been before it *de novo*". *Universal Camera Corp. v. N.L.R.B.*, 340 U.S. 474, 488 (1951). I am convinced, upon review of the record as a whole, that there was an abundance of evidence to support

the Board's position that Darlington, Deering Milliken and its affiliates constituted a single employer for purposes of the Act.

The record reveals that Darlington at the time when it ceased operations was one of seventeen corporations in the Deering Milliken complex owning and operating twenty-seven manufacturing plants scattered throughout the Eastern Seaboard. Deering Milliken performed the dual function of selling goods produced by each of these manufacturing corporations and factoring their accounts receivable.[5]

The head of Deering Milliken's Tax Department, C. W. Kable, Jr., was an officer of each of the seventeen manufacturing corporations. His Department prepared all federal and state tax returns of the manufacturing corporations and advised them on a wide variety of tax benefits to be derived through following the Department's suggestions in such matters as accounting procedures, vacation plans, and incentive compensation contracts for supervisors. The Tax Department also advised the various manufacturing corporations in the proper drafting of minutes of directors' and stockholders' meetings.

The Deering Milliken Insurance Department handled all insurance for the various plants. The manufacturing corporations purchased standard forms of insurance through the Insurance Department, with policies running to each of them. Fire insurance and workmen's compensation insurance, however, were purchased under a policy covering all the plants. Significantly, Deering Milliken paid premiums on an

[5] Each mill corporation was charged a fee for services rendered. The service charges made were substantially less than those which would have been made by independent selling and factoring agents. Also of importance is the fact that Deering Milliken had no other non-Milliken affiliated mills as clients.

executive air insurance policy covering both Deering Milliken executives and key manufacturing personnel, along with those employed by Deering Milliken Service Corporation and Deering Milliken Research Corporation.

The Deering Milliken Service Corporation, a wholly owned subsidiary of the seventeen manufacturing corporations, was organized in 1951 for the stated purpose of providing "essential services to organizations in the textile industry at the lowest possible cost". These services were restricted, almost exclusively, to those corporations in the Deering Milliken chain. Various departments of Deering Milliken Service purchased all machinery, equipment, and cotton for the manufacturing plants. Research was conducted in the area of product improvement and studies were regularly made in connection with production problems common to several or all of the plants. Based on its findings, Deering Milliken Service made recommendations to the various manufacturing corporations with a view toward obtaining maximum efficiency from raw materials, equipment, and personnel. These recommendations directly affected the work loads and work speeds in the manufacturing plants, a critical area of labor relations.

The Placement Department of Deering Milliken Service conducted an annual recruitment program among college students, seeking to attract supervisory personnel for each of the manufacturing corporations. The prospective management and technical trainees were encouraged to look upon the organization as a whole. The record reveals that after hiring there was considerable movement of supervisory personnel between corporations. For instance, approximately half of the supervisors who worked at Darlington between 1951 and 1956 were hired from other

Deering Milliken corporations, as was Darlington's Mill Treasurer, James M. Oeland.

Supplementing the services carried on by Deering Milliken Service, Deering Milliken Research Corporation conducted surveys and inspections in the manufacturing plants toward the goal of standardizing a preventative maintenance system common to all of the mills.

The record, in sum reveals that the Deering Milliken complex was a thoroughly integrated, monolithic enterprise. The participating mills were able to call upon various service arms of the enterprise to effect optimum employment of men, material, and machinery. Sales were made and factored through a common agency. Management personnel was jointly recruited and transfers freely made from one corporation to another. Moreover, descriptive literature and advertising published by Deering Milliken on behalf of the manufacturing corporations repeatedly emphasized the generic brand name of Milliken rather than individual corporate brand names.

After the alleged unfair labor practices which formed the subject matter of the present controversy, Deering Milliken & Co., Inc., in 1960 merged into the Cotwool Manufacturing Corp. to form Deering Milliken, Inc., and several of Cotwool's former subsidiaries were then liquidated into Deering Milliken, Inc. I find the merger of more than passing interest. To me it indicates that the separate corporate entities of the Deering Milliken complex were largely paper corporations which could be shifted and changed at the convenience of the Milliken family. This is highlighted by the fact that the various liquidations and mergers had no substantial effect on the actual functioning of the various entities within the Deering Milliken enterprise. Minot Milliken, Vice President of Deering

Milliken, Inc., himself testified that nothing "of substance" was changed as a result of the merger. I think the ease with which this corporate change was made in 1960 strongly indicates that the Deering Milliken complex in 1956 at the time of Darlington's dissolution was a single employer in which "corporate forms [were] largely paper arrangements that [did] not reflect the business realities". *N.L.R.B.* v. *Deena Artware, Inc.*, 361 U.S. 398, 403 (1960). The critical question becomes, therefore, did the Board have substantial evidence upon which to base its conclusion that there was a degree of common control and ownership existing in this unified industrial complex to warrant finding a single employer?

As pointed out in the majority opinion, Deering Milliken's capital stock was owned in majority amount by the members of the Milliken family. In addition they owned controlling stock in Darlington and in all of the other manufacturing corporations. These mill corporations, in turn, owned all the shares of Deering Milliken Service Corporation, and, along with Deering Milliken & Co., Inc., all the shares in Deering Milliken Research Corporation. The stock ownership was used by the Milliken family to place members of the Milliken family in the position of corporate officers and board directors of the various corporations. Roger Milliken was President of Deering Milliken and President also of all the manufacturing corporations except Laurens (where he was Vice President and on the Board of Directors). A majority of the directors of all the manufacturing corporations except one (Hartsville) were members of the Milliken family. Deering Milliken doesn't seriously deny that the Milliken family's stock ownership permitted the family, and more specifically Roger Milliken, to exercise dominion and control over all phases of busi-

ness and labor relations at each mill and over each and every corporate entity in the entire complex, but rather, it strongly denies that such control was actually exercised.

The Board found that through majority stock ownership and interlocking directories, the Milliken family (especially in the person of Roger Milliken) was able to and did exercise actual control in the area of labor relations. As stated by the Board:

> Roger Milliken, the president of all of the corporations save one, exercised ultimate control over the labor relations of all of the corporations. Thus he received reports from each of the mills as to progress in reducing the number of jobs, the pay raises given, hours worked and job assignments, was asked for approval of various personnel actions, and made suggestions as to the hiring of personnel. More important, however, was Roger Milliken's participation in the area having the greatest impact on labor relations—the area of collective bargaining. Thus he circulated a memorandum and editorial which was obviously intended as a primer for the managers of the mills in combatting union organization. During the organizational campaign his pervasive influence was demonstrated by the statements of supervisory employees that Roger Milliken would close the plant rather than permit its unionization.

The Board does not suggest that Roger Milliken actually engaged in the day to day direction of labor relations at each of the plants. The day to day details inevitably had to be left to the resident chief executive officers, the Mill Treasurers. Everything other than over-all direction and guidance as to company policy of labor relations would, of necessity, have to be exercised by subordinates. Indeed it seems remarkable that Roger Milliken had the time, in view of his far

flung interests and responsibilities, to keep informed about labor relations in the individual mills and to make the detailed suggestions as to many facets of labor relations that the record reveals he did. The record is replete with suggestions and recommendations by Roger Milliken to the Mill Treasurers on ways to improve and reduce jobs. For instance, Roger Milliken on different occasions proposed that each piece of machinery be tagged with its cost to discourage misuse, that closed circuit television be utilized to eliminate certain jobs, that machinery be rearranged to reduce the operator's walking distance, that the time which employees spent smoking be limited, and that beverage dispensing machines for employee use be installed. These suggestions were usually made in reference to "our" mills. These and other suggestions were not always followed, but they unmistakably indicate that Roger Milliken kept himself constantly informed as to what was occurring.

Proof of Roger Milliken's ultimate and uncontradicted control over major policies affecting labor relations was illustrated by his decision, with approval of his family, to close the Darlington plant because of the employees' decision to be represented by a union.

After the union had won the Board supervised election of September 6, 1956, Darlington Mill Treasurer Oeland and Darlington attorney Poag telephoned Roger Milliken to advise him of the union's victory. One day later, Roger Milliken decided to close down the mill. Roger Milliken informed three members of his family, who were on the Darlington Board of Directors, of his intention to close the mill; he did not inform Mill Treasurer Oeland. On September 12, the Board met and unanimously passed a resolution to close the mill. This resolution was acted upon at a shareholders' meeting of October 17 and passed by a

large majority, with only a few shareholders who were residents of the Town of Darlington voting against liquidation. Immediately after the shareholders' meeting, Roger Milliken was informed by South Carolina State Senator Mozingo, a resident of the Town of Darlington, that 83% of the mill employees had signed a petition to go back to work. Roger Milliken's reply was: "As long as there are 17% of the hard core crowd here I refuse to run the mill".

Thus I find in the record overwhelming evidence to support the Board's holding:

> [W]e conclude that Deering Milliken, primarily through the person of Roger Milliken, exercised control over the labor relations of all the corporations, including Darlington. Although the details of day-to-day personnel relations may have been, of necessity, conducted at the mills, it is manifest that the major decisions were exclusively in the hands of Roger Milliken. Under such circumstances it is clear that Deering-Milliken must assume responsibility for control of Darlington's labor relations.

Deering Milliken's brief contends that the Board had no basis to find that Roger Milliken was not acting solely in his capacity as President of Darlington Mills. The evidence, however, points to the fact that Roger Milliken retained ultimate control over the whole Milliken complex and acted as its chief executive officer, without delineating his various capacities. The Darlington Mill was but a small unit in a vast industrial empire employing more than 19,000 persons owned and controlled directly or indirectly by the Milliken family. Its closure was intended to be and was a grim deterrent to the thousands of employees in the affiliated plants who might entertain similar notions of unionization. Such conduct was properly considered by the Board to fasten responsibility of

his actions for unfair labor practices upon the entire complex.

CLOSING MILL UNFAIR LABOR PRACTICE

Having held that the Board had ample evidence to conclude that the Milliken complex was a single employer under the NLRA, we next consider whether under the decided cases, the act of Deering Milliken in shutting down the Darlington plant was an unfair labor practice, cognizable under Section 8(a)(3).

That the plant closure was the direct result of the organizational activities of the employees is too well documented by the record to require extended discussion. Roger Milliken himself gave that reason to his stockholders for his decision to close the mill. On approximately thirty separate occasions, supervisory personnel threatened the employees with closure in case the union won, and attributed their prophesies to Roger Milliken's well publicized hostility to unions. Milliken himself circulated to all of his mills a trade magazine article pointing out that his attitude was so well known that liquidation was inevitable from the minute the election result was announced. Darlington's belated efforts to stress the economic factors are belied by the prior history of the mill. In the nine months prior to the election, management had spent $400,000.00 in a modernization program which included not only new machinery but additions to plant structure. A belief that union wage demands and bargaining attitudes toward work loads may make future operations unprofitable does not constitute an economic reason which would excuse the respondent's conduct in this case. The Board found upon abundant evidence that the respondent's conduct was discriminatorily motivated.

> Conduct which on its face appears to serve legitimate business ends in these cases is wholly

> impeached by the showing of an intent to encroach on protected rights. The employer's claim of legitimacy is thereby totally dispelled. [Citing cases].
>
> * * * "The ultimate problem is the balancing of conflicting legitimate interests. The function of striking that balance to effectuate national labor policy is often a difficult and delicate responsibility, which the Congress committed primarily to the National Labor Relations Board, subject to limited judicial review. *Labor Board* v. *Truck Drivers Union*, 353 U.S. 87, 96". *National Labor Relations Board* v. *Erie Resistor Corporation, et al.*, 31 U.S.L.W. 4407, 4409, 4411 (U.S. May 13, 1963).

This court has held, in unison with other Circuits, that an employer may neither temporarily shut down operations to avoid bargaining with a union, *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), nor may he subcontract out work to another employer formerly done by a division in his business for that purpose, *N.L.R.B.* v. *Preston Feed Corp.*, 309 F. 2d 346 (4 Cir. 1962). Moreover, other Courts of Appeals have held that an employer may not transfer work to another plant owned, directly or indirectly by the employer himself, to avoid bargaining. See, e.g., *N.L.R.B.* v. *United States Air Conditioning Corp.*, 302 F. 2d 280 (1 Cir. 1962); *N.L.R.B.* v. *Winchester Electronics, Inc.*, 295 F. 2d 288 (2 Cir. 1961); *N.L.R.B.* v. *Lexington Electric Products Co.*, 283 F. 2d 54 (3 Cir. 1960), cert. denied, 365 U.S. 845 (1961); *Butler Bros.* v. *N.L.R.B.*, 134 F. 2d 981 (7 Cir. 1943). I fail to see any distinction in principle between such conduct and that of the Respondent here.

More to the point, I consider the decision of this court in *N.L.R.B.* v. *Preston Feed Corporation*, 309 F. 2d 346 (4 Cir. 1962) as controlling on the legal issue here. In that case the Board sought enforce-

ment of its order requiring the employer to reinstate its trucking operations which the Board found had been closed down in order to discourage unionization among its employees. This court enforced the order, pointing out that although the employer had decided for valid economic reasons to close the operation in the future, its sudden and precipitate closure was to discourage unionization and, therefore, constituted an unfair labor practice which could be remedied by requiring reopening until the employer could vindicate its closing for economic reasons. Judge Soper, speaking for a unanimous court, recognized the employer's right to close for valid economic reasons:

> The question has been considered in a number of cases in which the Board, in order to effectuate the purposes of the Act, has thought it desirable to require an employer to continue a certain business operation or department which he desired to abandon. In these cases it has been uniformly held that the Board is without power to interfere with management *where the discontinuance of a part of the business is prompted by legitimate business motives and not in order to frustrate the purposes of the Act or interfere with employees in the exercise of rights conferred upon them by the statute.* [Citing cases.] [Emphasis added.]
>
> In the instant case, as we have seen, the initial decision of the Company to close its trucking department was based on economic reasons and not on hostility to the union, but the immediate decision and the prompt closing of the department on March 6th, when it was discovered that the employees led by the union were insisting upon their rights under the statute, was impelled by the intent to restrain the employees in their rights to collective bargaining. We shall, accordingly, enter a decree that the order of the Board in these and other particulars be enforced * * *. 309 F. 2d 352.

It is apparent that the Board's order in this case is within the rationale of this Court's judgment in the *Preston* case. See also *N.L.R.B.* v. *Norma Mining Corp.*, 206 F. 2d 38 (4 Cir. 1953), where this court through Judge Dobie, speaking for a unanimous court, enforced the order of the Board requiring an operating lessee to reopen a mine closed by the employer in violation of Section 8(a) (1) and (3) of the Act.

Again, the Eighth Circuit in *N.L.R.B.* v. *Missouri Transit Co.*, 250 F. 2d 261 (8 Cir. 1957) faced a situation closely analogous to the one we have here. The Board's finding of an unfair labor practice and the relief granted by the Board and enforced by the court support the Board in this case. The Missouri Transit Company was a common carrier of passengers by bus for hire engaged in two operations: one a short-line intrastate shuttle bus operation between Waynesville, Missouri, and Fort Leonard Wood, Missouri; the other a long-line interstate bus operation between Fort Leonard Wood and Cedar Rapids, Iowa. As a result of union attempts to organize the shuttle-line bus drivers, the company sold all the equipment used in the operation of the shuttle route to a competitor. This action resulted in the discontinuance by the company of the shuttle-line route and service, and terminated the employment of all shuttle-line bus drivers. Upon the filing of an unfair labor practice against the company, the Board found that the company had disposed of the shuttle-line route and equipment used in operating it, and had discharged the shuttle-line drivers, for discriminatory reasons, in violation of Sections 8(a) (3) and (1) of the Act. In granting affirmative relief, the Board ordered that the company place the discharged drivers on a preferential hiring list for priority con-

sideration for jobs in the long-line operations and that the company pay back wages to these individuals from the date that the shuttle-line bus operations were closed to the date when they were either reinstated or placed on a preferential hiring list.

The company contended that the Board was powerless either to order back pay beyond the time when the shuttle-line bus operation ceased or to order reinstatement in a completely separate and independent division of the company. The Eighth Circuit rejected the Company's contentions and ordered enforcement of the Board's order in full. I think the logic of the *Missouri Transit* case compelling and the application of the principles announced clearly appropriate to case here being considered.

In *N.L.R.B.* v. *Wallick,* 198 F. 2d 477 (3 Cir. 1952), the court sustained a Board order requiring a respondent partnership which operated several enterprises engaged in the manufacture of ladies' garments to either reopen a plant which it had closed in violation of the Act because its employees had organized or give its employees an opportunity to work in other plants operated by the partnership. This was true even though the closed plant was owned by a separate corporation the stock of which was owned by the individual partners. See also *A. M. Andrews Co. of Oregon* v. *N.L.R.B.,* 236 F. 2d 44 (9 Cir. 1956).

In the present case, even absent single-stockholder status, the employees had a remedy. After the Darlington stockholders on October 17, 1956, had adopted the recommendations of the Board of Directors to liquidate the Darlington Mill, employees were discharged in separate groups over the intervening period until the plant closed on November 24. Yet, pursuant to the laws of South Carolina, the corporation continued to exist for the purpose of liquidat-

ing its assets and settling its liabilities. If, as the Board found, amply supported by the record as a whole, these discharges were for discriminatory reasons under Section 8(a)(3), relating to the employees' "tenure of employment", then at a very minimum the amounts realized from the sale of Darlington machinery and equipment should be allocated to reimbursing the discharged employees for lost wages from the time of their discharges until the liquidation of the corporation had been completed. It is obvious that if one or two, or even a majority of employees had been discharged for their activities on behalf of the union, then the court would uphold a Board finding of an 8(a)(3) violation. It seems tortuous logic to say, therefore, that because the company discharged without distinction both the employees who voted against the union (but who were discharged nonetheless because a majority of the employees elected to be represented by a union), the company is absolved from liability under the Act.

But beyond this remedy I think the Board was justified in ordering Deering Milliken to provide back pay until the discharged employees were able to obtain substantially equivalent employment. The record reveals that a large number of Darlington supervisory personnel was absorbed into the Deering Milliken complex. Late in September 1956, the Deering Milliken Industrial Engineering Department sought and obtained from Darlington Mill Treasurer Oeland a list of Darlington Supervisory personnel who might be "useful" to it. All of these men were interviewed by the Department. Plans were made to have all supervisory personnel of the Darlington Mill transferred to the Department's payroll for the three month period after their separation from Darlington. The purpose of this arrangement was to provide a

period of time within which these men could be "picked up" by other Deering Milliken Mills. Some of these supervisors were actually picked up, going directly on the payroll of other mills without an interval on the payroll of the Department. Others were transferred to other parts of the Deering Milliken organization. Although some supervisors ceased their affiliation with Deering Milliken entirely, these were given time off, with pay, in which to seek new employment opportunities. One of these men was Mill Treasurer Oeland, who remained on the Darlington payroll until July, 1957, some seven months after mill machinery and equipment had been sold. In addition, a few supervisors received bonus payments after the Darlington closing in appreciation of their efforts during the union crisis. Thus, even though the Deering Milliken complex disclaims any responsibilities after the Darlington closing for those whom it regards as its enemies, it managed to reward and find places for those whom it regarded as its friends. I see nothing to prevent enforcing the Board's order which would also require Deering Milliken to offer substantially equivalent employment to non-supervisory personnel who were equally adversely affected by the mill's closing.

I am not unmindful of the Board's findings that Darlington committed other violations in addition to the 8(a)(3) here discussed, specifically 8(a)(1) and 8(a)(5). The repeated threats of members of management that the mill would be shut down if the union won the representation election constituted a classic form of interference, restraint, and coercion proscribed by Section 8(a)(1). Section 8(a)(1) was also violated by management threats to blacklist union adherents, their interrogation of employees regarding their union activity, and their support of a petition

disavowing the union after the announced intention of Roger Milliken to close the mill upon learning of the union victory.

The Board also found that the failure of the Company to bargain with the union with respect to the tenure of employment of the employees in the Darlington Mill and to furnish the union with wage and related bargaining data constituted an unfair labor practice under Sections 8(a)(5) and (1). I am convinced that the record as a whole amply supports the Board's findings, but do not feel that an extended discussion of these violations is warranted here.

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 8861

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

DARLINGTON MANUFACTURING COMPANY AND DEERING MILLIKEN, INC., INTERVENORS

ON PETITION TO REVIEW AND MODIFY A DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

THIS CAUSE came on to be heard upon the petition of Textile Workers Union of America, AFL-CIO, to review and modify a decision and order of the National Labor Relations Board entered on October 18, 1962, in a proceeding entitled Darlington Manufacturing Company, Roger Milliken, Deering, Milliken & Co., Inc., and Textile Workers Union of America, AFL-CIO, known upon the Board's records as Case

No. 11-CA-1292; upon the certified list in lieu of a transcript of the record; the answer of the respondent; the amended petition to review, and the answer of the National Labor Relations Board to the amended petition to review, and the said cause was argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered, adjudged and decreed by the United States Court of Appeals for the Fourth Circuit, that the said petition be, and the same is hereby, denied.

CLEMENT F. HAYNSWORTH, Jr.,
United States Circuit Judge.

HERBERT S. BOREMAN,
United States Circuit Judge.

ALBERT V. BRYAN,
United States Circuit Judge.

I dissent:

J. SPENCER BELL,
United States Circuit Judge.

I concur with the dissent:

SIMON E. SOBELOFF,
Chief Judge, Fourth Circuit.

A true copy,
Teste:

MAURICE S. DEAN,
Clerk, U.S. Court of Appeals for the Fourth Circuit.

By MARGARET L. DAVIS,
Deputy Clerk.

(Filed November 19, 1963; Maurice S. Dean, Clerk.)

APPENDIX B

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

SEC. 8. (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization; * * *

* * * * *

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

* * * * *

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit

appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: * * *

* * * * *

SEC. 10. * * *

(c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

* * * * *

APPENDIX C

The memorandum and attached article circulated by Roger Milliken on November 16, 1956 (General Counsel's Exhibit N–1), are as follows:

Date: November 14, 1956

To:

Mr. C. E. Anderson
Mr. George Asnip
Mr. J. M. Bailey
Mr. D. I. Beal
Mr. S. J. Craig, Jr.
Mr. E. O. DeFore
Mr. L. C. Ellis
Mr. J. A. Ferguson
Mr. L. J. Fisher, Jr.
Mr. Winston Garth
Mr. C. T. Holland
Mr. J. M. Jackson
Mr. W. S. Manning
Mr. J. A. Meehan
Mr. W. H. Moore
Mr. J. J. Norton, Jr.
Mr. R. C. Owings
Mr. T. E. Peden
Mr. I. S. Pitts, Jr.
Mr. H. L. Pratt
Mr. H. B. Risher
Mr. J. V. Roberts
Mr. G. G. Simmons
Mr. F. A. Thompson
Mr. W. E. Thrailkill
Mr. M. G. Wallace
Mr. R. H. Bush
Mr. H. C. Byrd
Mr. Harry Defore
Mr. K. M. Lowry
Mr. R. B. Newton
Mr. S. L. Smith
Mr. T. D. Truluck

From: Roger Milliken

Attached hereto is an article from the November eighth issue of AMERICA'S TEXTILE REPORTER. I am sending it to you in case you have not had an opportunity to see it. It is apparent from this article that this magazine made a real investigation in Darlington, and for that reason, I think the article is interesting.

While this article shows that the union leaders definitely misled the people, it also points out that the mill

was negligent in its public relations. I hope that you will read this second part of the article carefully and review in your mind the steps that you are taking to bring about an understanding of your mill and its problems in your community. The unions are going to be making a tremendous drive all through this area, and there are few things that are more important to us than making sure that the leaders in your community understand and are sympathetic to what you are trying to do.

Enclosure.

cc: Mr. A. B. Sibley
Mr. W. A. L. Sibley
Mr. M. C. Stone

Darlington Situation Becomes Object Lesson to All Concerned

Present stepped-up union activity in South harbinger of stronger efforts and more exaggerated promises to come

The Darlington (S.C.) Mill affair is becoming a tangled mess. And the question most frequently asked in textile circles, how does a community of 500 mill workers who admitted satisfaction with their wages, work loads and working conditions in a well equipped mill, suddenly elect to place their future in the hands of strangers representing the Textile Workers Union of America?

Hundreds of answers have been forthcoming from Darlington during the past few weeks since an NLRB election was won by the union by a slim margin of eight votes, 256 for the union and 248 against.

In order to sift the charges and counter-charges of management and labor and the workers themselves, a Reporter editor visited the town of Darlington and interviewed the Mayor, Chamber of Commerce

Secretary, bankers, gas station operators, hotel managers and several of the workers from the mill.

The picture proved a confusing one, but the pattern and the reasons for the worker's unfortunate choice, become more apparent as the workers themselves repeated over and over that they did not want the union, they were satisfied with their jobs and the pay, but they voted in favor of it because the organizers threatened their future.

As it stands now, the stockholders of the company voted on October 17 to liquidate the mill at public auction on December 12 and 23. Stock in process is being run out at the mill, with about half of the employees already laid off as of October 23.

The events leading up to the election and the problems facing the employees and management of the Darlington mill, the union threats and promises stand out as the most important factor.

This was affirmed by personal interviews with workers, Mayor Thomas W. Buchanan and Chamber of Commerce Secretary, Joseph Funderburk. Some affidavits from over a dozen former Darlington workers attested to the fact that union organizers called on them at their homes and repeated statements to the effect that if they failed to vote the union into the mill, management would make their working conditions unbearable, and that there was nothing the mill could do about liquidating or closing the mill once the union was in control.

Again and again in personal interviews with these Darlington workers, many of whom were dismissed from their jobs a day after the liquidation vote, the promises of the union were uppermost in their minds. One card fixer who asked that his name not be used said, "They promised us everything at the union meetings, nothing on paper or anything like that, but

after the election when the mill voted to close, the best they could suggest was that we get individual lawyers and sue the mill for firing us out of our jobs."

"And the union fellows—the big men who spoke to us last Sunday promised that the union would have an investigation." The former Darlington worker was not bitter as he continued to relate the happenings at the Sunday, October 21 meeting, adding "The man (Boyd E. Payton, Southern TWUA Director from Charlotte, N.C.) said the whole union will be used for our best interest. He even said he was going to Washington to fight for us. But that's no good now, for I'm out of my job. I went into work the day after the stockholders' voted to close the mill, last Thursday it was, and I was told I was all through."

Going back a few weeks before the union election took place, it was Mayor Buchanan who told of his talks with several of the mill workers. They outlined to him that the Union was gaining a foothold. Darlington is a small city, a central square where the court house and Federal buildings overshadow the city hall. The mayor has his office in the rear of his jewelry store. While he was being interviewed he had several visits from local business men, the Chamber of Commerce Secretary and the head of one of the local banks. They joined him in the discussion of the mill situation and showed real interest and a full knowledge of the problem. Of course they were interested from an economic standpoint because although the word had been out less than a week that the mill would definitely close, business activity in the town was at a standstill. Stores were empty, the streets were deserted and four policemen were standing together in the square, talking, presumably to keep from being bored.

A gas station operator said business had dropped to half his former volume during the past two weeks and he was not taking any more charge accounts except those guaranteed by the gasoline company. The local savings bank was checking mortgages and payments and although there was not any increase in money withdrawn, there had been a noticeable decrease in deposits over the week-end.

Even the newsstand had papers left over following the first rush a week before to learn if the mill definitely would close. Everywhere the same story was repeated, "if only the union had left our people alone we could have gotten along fine." The man who pumped the gas at the gas station had a wife and mother who were working in the mill. They did not vote for the union but he said, "they have got to suffer along with the rest who listened to the promises of the union fellows."

The greatest resentment seemed to center among those who believed that the Union organizers had "gone too far" in making promises at meetings in trying to convince the workers that a few paid holidays were worth giving up their freedom for union domination. Incidentally the paid holidays seemed to be the only actual offer made by the union other than many promises to do what they could to change the management of the mill.

A worker who voted for the union said, "I had no complaints only that they were going to put in a conveyor to handle the cans from the cards and drop one card hand. That would mean I'd had to do my card stripping and handle the cans too, with more work for the two card hands running 136 cards. The Union fellow told me if they got the vote he'd keep it the old way of three card hands, and one stripper

to the 136 cards with no conveyor. That's why I voted for the union," he concluded.

Of course the union man who was to have made this statement, knew that he could not prevent the installation of more efficient means of transporting card sliver, but it was this type of deceptive promise that showed up throughout the interviews with the various workers.

The lesson to be learned from the problems of Darlington for both management and labor is that the extent to which the union will go to make promises, and also the importance of direct communications between the workers and management which must be specific and flawless. Labor counsellors have repeatedly warned that the most important weapon management holds, to use in warding off unionization, is to make everyone in the mill a part of a team; make them feel a part of the success or failure of the mill in its every operation. The sense of accomplishment of the team can overcome the group or individual promises made by union organizers.

The final lesson to be learned from the Darlington affair is the need for good public relations. Properly operating, year round, public relations contact on a local and national level for large firms, operating in several areas, is of utmost importance. This was indicated again and again in discussions with Darlington officials who decried the utter lack of any attempt of public relations before, during or after the union attempted its move to take over the company.

It seems that the people of Darlington, S.C. have suddenly come face to face with the basic labor management problem: Who is going to manage? We concede that stockholders of a corporation such as the now liquidated Darlington Manufacturing Company,

being the proprietors of the company, select the management of the mill and expect that the management shall allocate the job, delegate the wages and sell goods at a profit. We further contend that the community has a certain responsibility to see that such a co-operative civic climate will exist as to assure the proprietors of the company a fair competitive chance. If the people of Darlington knew anything of the Deering Milliken record they would know that the management does not intend an unprofitable division nor has it intended to share the prerogatives of management with labor union leaders. This has been the case through three generations of Milliken operations. When the Madison Woolen Mills of Madison, Maine, became not only unprofitable but unionized, Mr. Gerrish Milliken liquidated it, although the Cowan and Farnsworth Mills in the State of Maine still operate and must, therefore, be profitable. When the Dallas Manufacturing Company of Huntsville, Alabama, became unionized, the Millikens liquidated it, contrary to the opinion of many local people that such would not be the case. We ourselves are small shareholders in Darlington and from experience and acquaintanceship, we knew the minute the union election vote was announced that we would receive a call for a special meeting to vote for liquidation. We know something about the effect of mill losses to a community having lived through hundreds of them in the Northeast. On the other hand, as one of the owners of Darlington even though an infinitesimal percentage of those shares is held in our name, we could do nothing other than vote to terminate the operations of the company if management responsibility was going to be shared with the Textile Workers Union of America.

U.S. GOVERNMENT PRINTING OFFICE: 1964